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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/921,323	08/02/2001	Jay Darrell Gillespie	34423/237429	5051
826	7590	11/15/2004	EXAMINER	
ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000			BOYD, JENNIFER A	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 11/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/921,323

Applicant(s)

GILLESPIE ET AL.

Examiner

Jennifer A Boyd

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 4-28 is/are pending in the application.
- 4a) Of the above claim(s) 11-28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 4 - 10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn. The Applicant's Amendments and Accompanying Remarks, filed August 31, 2004, have been entered and have been carefully considered. Claims 1 and 4 are amended, claims 2 – 3 are cancelled, claims 11 – 28 are withdrawn and claims 1 and 4 – 28 are pending. In view of Applicant's argument that the previous rejection as detailed in the Office Action dated March 10, 2004 did not teach or suggest the use of reclaimed polypropylene in the core only in the sheath, the Examiner withdraws all previously set forth rejections. However, after an updated search, additional prior art has been found which renders the invention as currently claimed unpatentable for reasons herein below.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

3. Claims 1 and 4 – 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taylor et al. (US 6,737,009) in view of Kent (US 5,885,705).

Taylor is directed to a process and system for producing multicomponent spunbonded nonwoven fabrics (Title).

As to claims 1, 7, 5 and 10, Taylor teaches a process comprising separately melting two or more polymeric components, separately directing two or more molten polymer components

through a spin beam assembly equipped with distribution plate configured so that the separate molten polymer components combine at a multiplicity of spinnerette orifices to form filaments containing the two or more polymer components; extruding the multicomponent filaments from the spinnerette orifices into a quench chamber; directing quench air from a first independently controllable blower into the quench chamber and into contact with the filaments to cool and solidify the filaments; directing the filaments and the quench air into and through a filament attenuator and pneumatically attenuating and stretching the filaments; directing the filaments from the attenuator into and through a filament depositing unit; depositing the filaments from the depositing unit randomly upon a moving continuous air-permeable belt so as to draw air through the depositing unit and through the air-permeable belt and directing the web through a bonder and bonding the filaments to convert the web into a coherent nonwoven fabric (column 1, lines 30 – 65). Taylor teaches that the polymer components occupy distinct areas or zones of the filament cross-section. Taylor suggests that the filament can be in a sheath-core configuration (column 3, lines 55 – 69). Taylor teaches that the polymer components for the multi-component filaments are selected in proportions and to have melting points, crystallization properties, electrical properties, viscosities and miscibilities that will enable the multicomponent filament to be melt-spun and will impart desired properties to the nonwoven fabric. Taylor teaches many polymers are suitable for use such as polypropylene (column 4, lines 65 – 68 and column 5, lines 1 – 10). It should be noted that Taylor does not teach that the polypropylene is reclaimed or even partially reclaimed so it is the position of the Examiner that the polypropylene is 100% virgin as required by claim 5.

Taylor fails to teach that the core component comprises reclaimed polypropylene in an amount up to 100% by weight, with the total amount of reclaimed polypropylene in the filaments being 25% or greater as required by claims 1, 7 and 10. Taylor fails to teach that that core is formed entirely of reclaimed polypropylene as required by claims 4 and 9.

Kent is directed to bicomponent fibers having contaminant-containing core domain and the methods of making the same (Title). Kent teaches a novel bicomponent fiber having a polyamide domain and a contaminant containing domain which is embedded entirely within, and thereby surrounded by the polyamide domain (Abstract). The preferred bicomponent fibers have a sheath-core structure where the contaminant-containing polymer constitutes the core (Abstract). Kent teaches that the core will preferably represent about 50% or greater by weight of the total bicomponent fiber weight (column 4, lines 5 – 10). Kent notes that surprisingly even though the core is formed of a contaminant-containing polymer (which is hard to spin), the bicomponent fibers are readily spinnable and exhibit properties which are comparable in many respects to fibers formed of 100% polyamide (Abstract). Kent notes that it would be desirable to replace a portion of the polyamide fibers with a core formed from the reclaimed polymer to reduce the cost (column 1, lines 25 – 33).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use a reclaimed polymer as suggested by Kent as the polypropylene core of Taylor motivated by the desire to reduce the cost of the filaments while not compromising the physical properties of the filaments.

As to claim 6, Taylor in view of Kent teaches the claimed invention except fails to teach that the sheath is formed from a blend of virgin polypropylene and reclaimed polypropylene recovered from previously spun polypropylene fiber or webs comprised of previously spun polypropylene fiber. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate at least a small portion of reclaimed polypropylene into the sheath of the bicomponent fibers since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of design choice. *In re Leshin*, 125 USPQ 416. In the present invention, one would have been motivated to use a combination of virgin polypropylene and reclaimed polypropylene as the sheath to provide a lower cost material. It is highly suggested that the Applicant provide a percentage of the amount of reclaimed polypropylene present in the sheath, because any amount of polypropylene, even a fraction of a percent, would meet Applicant's claim limitation.

As to claim 8, although Taylor in view of Kent does not explicitly teach the claimed second polymer component having a melt flow rate of at least 5 units greater than that of the first polymer component, it is reasonable to presume that melt flow rate is inherent. Support for said presumption is found in the use of like materials (i.e. a sheath-core filament having a polypropylene sheath and a reclaimed polymer core) which would result in the claimed property. The burden is upon the Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594. In addition, the presently claimed property of the second polymer component having a melt flow rate of at least 5 units greater than that of the first polymer component would obviously have

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been present once the Taylor in view of Kent product is provided. Note *In re Best*, 195 USPQ at 433, footnote 4 (CCPA 1977).

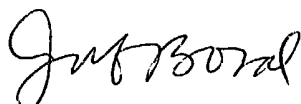
Response to Arguments

4. Applicant's arguments with respect to claims 1 and 4 - 10 have been considered but are moot in view of the new ground(s) of rejection.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer A Boyd whose telephone number is 571-272-1473. The examiner can normally be reached on Monday thru Friday (8:30am - 6:00pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jennifer Boyd
November 10, 2004


Ula C. Ruddock
Primary Examiner
Tech Center 1700